

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

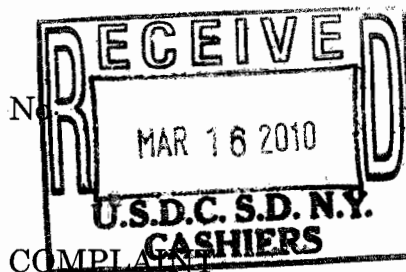
-----X  
BRENDA BUNNELL,

Plaintiff,

-against-

LAW OFFICES OF  
MITCHELL N. KAY, P.C.

Defendant.  
-----X



JURY DEMANDED

Complaint

*Introduction*

1. Plaintiff is a consumer who has been subjected to Defendant's violations of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq.* and New York General Business Law ("GBL") § 349. The FDCPA prohibits debt collectors from engaging in abusive, deceptive, unfair, and illegal collection practices. New York GBL § 349 prohibits deceptive acts and practices in any business conducted in New York State.

*Jurisdiction and Venue*

2. This Court has federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

3. Declaratory relief is available under 28 U.S.C. §§ 2201 and 2202.

4. Venue is proper in this district under 28 U.S.C. § 1391(b), because the defendant has offices and transacts business in this district, and the acts and transactions that give rise to this action occurred, in substantial part, in this district.

*Parties*

5. Plaintiff Brenda Bunnell (Plaintiff or Bunnell) is a citizen of New York State who resides within this District.

6. Bunnell is a “consumer” as that term is defined by § 1692a(3) of the FDCPA.

7. Defendant Law Offices of Mitchell N. Kay, P.C. (Defendant or MNK) is a law firm engaged in the business of collecting debts in New York State.

8. Defendant’s principal place of business is located at 7 Penn Plaza, 18<sup>th</sup> Floor, New York, New York 10001.

9. Upon information and belief, MNK’s principal purpose is the collection of debts using the mails, telephone and litigation.

10. Upon information and belief, MNK regularly attempts to collect debts alleged to be due another using the mails, telephone and litigation.

11. Defendant MNK is a “debt collector,” as defined by FDCPA § 1692a(6).

*Factual Allegations*

12. On March 31, 1993, Plaintiff entered into a Stipulation of Settlement with Chase Manhattan Bank (“Chase”) to pay \$7000.00 in full satisfaction of a debt Plaintiff owed to Chase. At that time, Chase was represented by Defendant Law Offices of Mitchell N. Kay. A copy of the Stipulation is attached as Exhibit A.

13. Although Plaintiff has never lived outside of Bronx County, the Stipulation dated March 31, 1993, was captioned in Civil Court of the City of New York, County of New York.

14. Upon information and belief, Defendant never filed a summons and complaint or purchased an index number for Chase’s claim against Plaintiff.

15. Furthermore, upon information and belief, Defendant drafted the Stipulation dated March 31, 1993, to include a false index number, 12966/92.

16. Upon information and belief, New York County Civil Court Index Number 12966/92, was assigned to an unrelated claim, brought by a law firm other than Mitchell N. Kay on behalf of a plaintiff other than Chase.

17. Upon information and belief, Chase has never brought a claim against Brenda Bunnell in Bronx County Civil Court.

18. Sometime after April 15, 1993, due to significant financial constraints, Plaintiff was unable to make payments under the Stipulation of Settlement dated March 31, 1993.

19. In or about May 2004, Defendant sent a communication to Plaintiff indicating that it represented MKM Acquisitions, LLC, who had allegedly acquired

Plaintiff's obligation from Chase. Although it was over 10 years since Plaintiff stopped making payments to Chase, well beyond the Statute of Limitations to sue, and well beyond the one-year CPLR time-limit for moving for default, Defendant demanded that Plaintiff pay a total of \$7,372.87 to Defendant, on behalf of MKM Acquisitions, LLC, as assignee of Chase.

20. As a result of that communication, Plaintiff agreed to pay Defendant \$25.00 per month until the alleged debt of \$7,372.87 was satisfied. Plaintiff and Defendant further agreed that no interest would accrue on the alleged debt during the repayment period.

21. Thereafter, Plaintiff began paying \$25.00 each month. In return Defendant sent a monthly acknowledgement of each \$25.00 payment.

22. Each of Defendant's monthly acknowledgements showed a balance statement that reflected a \$25.00 decrease from the previous month's balance with no interest accruing.

23. The acknowledgement mailed to Plaintiff on or about March 4, 2009, showed a balance allegedly due of \$5,772.87. A copy of the March 4, 2009 acknowledgement is attached as Exhibit B.

24. From March through June of 2009, Plaintiff continued to make monthly payments of \$25.00. Defendant, however, did not send the usual acknowledgements after each payment during that period.

25. In late June of 2009, Plaintiff called Defendant's office to inquire about Defendant's failure to send acknowledgements for her three payments in March, April and May.

26. During the June 2009 phone conversation Defendant's employee, "Miles", told Plaintiff that her \$25 monthly payments were only covering interest and that she would have to increase the amount of her payments if she wished to pay off the alleged debt. Plaintiff explained to "Miles" that according to her 2004 agreement with Defendant, no interest was accruing on the alleged debt. "Miles" told Plaintiff that she was mistaken and demanded that Plaintiff pay more than \$25 per month in order to pay off the alleged debt.

27. On or about July 9, 2009, Defendant sent Plaintiff an acknowledgment of her \$25 payment from the previous month. A copy of the acknowledgment is attached as Exhibit C.

28. Exhibit C states a balance due of \$16,423.06 and demands a monthly payment of \$50.00.

29. On or about August 20, 2009, Defendant sent Plaintiff a letter demanding payment for a "past due" amount of \$50.00. A copy of the demand letter is attached as Exhibit D.

30. Exhibit D states a balance due of \$16,504.02.

31. On or about September 20, 2009, Defendant sent Plaintiff another letter demanding payment for a "past due" amount of \$100.00. A copy of the demand letter is attached as Exhibit E.

32. Exhibit E states a balance due of \$16,558.62.

33. On September 26, 2009, Plaintiff called the Defendant and spoke with one of Defendant's employees. Plaintiff disputed the new balances and demands for higher monthly payments that appeared on the July 9, 2009, August 20, 2009, and September 20, 2009 letters from Defendant.

34. Defendant's employee told Plaintiff that her account had "been taken back by Chase," and that Plaintiff should now "get in touch with Chase," because the debt was "no longer with the Law Offices of Mitchell N. Kay."

35. On or about October 16, 2009 Defendant sent Plaintiff a letter advising that her "account has been referred to this office," and that "[t]his letter shall serve as a demand upon you for payment of the judgment balance indicated above." A copy of this letter is attached as Exhibit F.

36. Exhibit F states a balance due of \$16,611.34.

37. On October 29, 2009 Plaintiff sent a letter to Defendant disputing the debt and requesting proof of the "judgment" referred to in Defendant's October 16, 2009 letter. To date, Plaintiff has not received any response from Defendant. A copy of Plaintiff's dispute is attached as Exhibit G.

38. Upon information and belief, no judgment has been entered against Plaintiff in either New York County Civil Court or Bronx County Civil Court at any time since January 1, 1992.

39. After five months of phone calls and written requests for information, Defendant has failed to provide any proof of judgment or any explanation for why it has begun charging interest on what it now claims is a “judgment balance.”

40. The alleged debt that Defendant sought to collect from Plaintiff arose out of transactions that were incurred primarily for personal, family, or household purposes.

41. The alleged debt that Defendant sought to collect from Plaintiff is a “debt,” as that term is defined by § 1692a(5) of the FDCPA.

**COUNT I**  
**Violations of §§ 1692e and f of the**  
**Fair Debt Collection Practices Act, and their subsections**

42. Plaintiff restates, realleges, and incorporates herein by reference all foregoing paragraphs as if set forth fully in this Count.

43. Collection letters, such as those sent by Defendant, are to be evaluated by the objective standard of the hypothetical “least sophisticated consumer.”

44. Section 1692e of the FDCPA prohibits a debt collector from using any false, deceptive, or misleading representations in connection with the collection of any debt. Specifically, FDCPA § 1692e(2)(A) states that a debt collector cannot make a “false representation of the character, amount, or legal status of any debt.” FDCPA § 1692e(10) prohibits “[t]he use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.”

45. Section 1692f of the FDCPA prohibits the use of “unfair or unconscionable means to collect or attempt to collect any debt.” Specifically, FDCPA § 1692f(1) prohibits “[t]he collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.”

46. Defendant’s letters dated July 9, 2009, August 20, 2009, September 20, 2009 and October 16, 2009 violate 15 U.S.C. § 1692e(2)(A) because they misrepresent the amount of the debt allegedly owed. Furthermore, Defendant’s letters violate 15 U.S.C. § 1692(f)(1) because they attempt to collect interest that, upon information and belief, is not expressly authorized by agreement or law. These are also false and deceptive acts under 15 U.S.C. §§ 1692e and e(10), and unfair and unconscionable acts under 15 U.S.C. § 1692f.

47. Defendant’s communications with Plaintiff in the September 26, 2009 phone conversation violate 15 U.S.C. § 1692(e)(2)(A) because Defendant’s employee misrepresented the character and legal status of the debt. Furthermore, Defendant’s October 16, 2009 letter violates 15 U.S.C. § 1692(e)(2)(A) because it misrepresents the character, legal status, and amount of the debt. These communications are also false and deceptive acts under 15 U.S.C. §§ 1692e and e(10), and unfair and unconscionable acts under 15 U.S.C. § 1692f.

48. Defendant’s violations of 15 U.S.C. §1692, *et seq.*, render it liable to Plaintiff.



49. As a result of Defendant's deceptive and unfair debt collection practices, Defendant is liable to the Plaintiff.

COUNT II  
*Violations of New York General Business Law § 349*

50. Plaintiff hereby restates, realleges, and incorporates herein by reference all foregoing paragraphs as if set forth fully in this Count.

51. Under New York General Business Law § 349, deceptive acts or practices in the conduct of any business conducted in the State of New York are unlawful.

52. GBL § 349 provides in relevant part as follows:

- a. *Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.*
- h. *In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.*

53. By unlawfully pretending that a lawsuit had been filed, attempting to collect on an alleged debt more than one year after default under a settlement agreement, changing the terms of a payment agreement, demanding payment of an amount three times greater than what was agreed, demanding payment of interest

without legal or contractual authority, falsely reporting to Plaintiff that the original creditor still had ownership of the debt, and misstating that there was a judgment against Plaintiff, Defendant has committed materially misleading and consumer-oriented acts that have caused Plaintiff to suffer actual injury in the form of emotional distress.

54. Upon information and belief, Defendants regularly utilize deceptive practices as described above in an attempt to collect consumer debts.

55. Defendant's actions have a broad impact on New York consumers at large.

56. As a direct and proximate result of Defendant's deceptive acts and practices, committed in willful and knowing violation of GBL §349, Plaintiff was damaged in that she, among other things, suffered stress and anxiety as a result of Defendant's deceptive collection practices.

57. Defendant is liable to Plaintiff for violations of GBL § 349.

*Demand for Jury Trial*

58. Plaintiff demands a trial by Jury.

*Prayer for Relief*

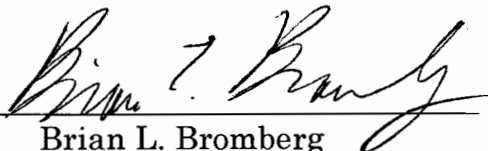
WHEREFORE, Plaintiff prays that this Court grant the following relief in her favor and that judgment be entered against Defendant for the following:

- (A) Actual damages;
- (B) Statutory damages;

- (C) Civil Penalties;
- (D) Punitive Damages;
- (E) Attorneys' fees, litigation expenses and costs;
- (F) A declaration that Defendant's July 9, August 20, September 20, and October 16, 2009 letters violate the FDCPA; and
- (G) Any other relief that this Court deems appropriate under the circumstances.

Dated: New York, New York  
March 16, 2010

Respectfully submitted,

By:   
Brian L. Bromberg  
One of Plaintiff's Attorneys

Attorneys for Plaintiff  
Brian L. Bromberg  
Peter T. Lane  
Bromberg Law Office, P.C.  
40 Exchange Place, Suite 2010  
New York, NY 10005  
(212) 248-7906

# Exhibit A

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK

CHASE MANHATTAN BANK

Plaintiff

Index No. 12966/92

STIPULATION OF SETTLEMENT

-against-

BRENDA G. BUNNELL

Defendant

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned parties to the above entitled action as follows:

1. The defendant(s) appear(s) herein generally, admit(s) service of the summons and complaint, acknowledge(s) that ~~he/she/they~~ is/are not in military service and consent(s) to the jurisdiction of this Court.

2. The defendant(s) admit(s) being indebted to the plaintiff in the sum of \$ 6,755.80 with interest from 5/29/92 on the amount of \$ 6,755.80

3. The defendant(s) agree(s) to pay and the plaintiff agrees to accept the sum of \$ 7,000.00 in full settlement of this action, the payment of which shall be made by the defendant(s) to MITCHELL N. KAY, ESQ., at 7 Penn Plaza, New York, New York 10001 as follows:

a) Payments of at least \$50.00 per month are due by the Fifteenth day of each month for nine consecutive months beginning April 15, 1993.  
b) Thereafter, beginning January 15, 1994, monthly payments of at least \$100.00 per month are due by the Fifteenth day of each month until \$7,000.00

4. In the event that the defendant(s) default(s) in making any <sup>part</sup> of the payments required to be made by this stipulation, the plaintiff shall give to the defendant(s) five (5) days written notice, to the address stated below, to cure such default. If, after the giving of such notice, the defendant(s) fail(s) to cure any such default, plaintiff shall have the right to enter judgment against the defendant(s) for the sum of \$ 6,755.80 plus \$ 0 attorney fees, plus interest, costs and disbursements, and shall give credit to the defendant(s) upon the execution thereof for any payments made hereunder.

5. This stipulation can only be changed or modified by a writing signed by the parties hereto.

6. If the summons and complaint herein have not been filed in Court as provided for by statute, the defendant(s) consent(s) to the filing thereof by the plaintiff beyond the statutory period, nunc pro tunc.

DATED: March 31, 1993

MITCHELL N. KAY  
Attorney for Plaintiff

By: [Signature]

BRENDA G. BUNNELL  
Address: 2133 Valentine Ave

BARRY M. RATTNER

718 365-1717

Bklyn N.Y. 11453 #2N

# Exhibit B

PO Box 9006  
Smithtown, NY 11787-9006  
03813153120304090.346000KMMPR

31 62 00007621  
596162

Call Toll Free:  
1-800-275-4860

N.Y. Office \*\*\*  
7 Penn Plaza  
New York, NY 10001  
\*\*\* admitted in New York  
& Washington D.C.

PERSONAL AND CONFIDENTIAL

March 4, 2009



BRENDA O BUNNELL  
2433 VALENTINE AVE APT 2N  
BRONX NY 10458-5348

Office Hours: Mon-Thurs 8:00am - 9:00pm EST  
Friday 8:00am - 6:00pm EST  
Saturday 8:00am - 12:00 Noon EST

Reference Number - 03813153-11

Account Number	RE - BRENDA BUNNELL
Balance - \$5,772.87	
Creditor - MKM ACQUISITIONS LLC, ASSIGNEE OF THE CHASE MANHATTAN BANK USA VISA	

This will acknowledge, with thanks, your payment of \$25.00 for the above referenced account. Please make sure your next payment of \$5,772.87 arrives by the 10TH of each month so that your payment plan is kept current.

Please include the reference number with your payment.

If you have any questions regarding this account, please contact this office at the number(s) provided above.

Please cut off the bottom portion of this letter, fill in completely, and include it with your next payment. We have enclosed a return envelope for your convenience.

You are invited to visit our website [www.lawofmnk.com](http://www.lawofmnk.com) to resolve this debt privately or to write to us or to update your personal information.

Paid  
\$25.00  
4/2/09  
Wendy Weiss  
09-029712335

**PLEASE ADDRESS ALL PAYMENTS TO:**

Law Offices of Mitchell N. Kay, P.C.  
7 Penn Plaza, New York, NY 10001-3995

Notice: Please see reverse side for important information.

Detach Here

Please return bottom portion with payment.

Detach Here

# Exhibit C



## Law Offices of Mitchell N. Kay, P.C.

\*\*N.Y. Office\*\*

7 Penn Plaza

New York, NY 10001

\*\*Admitted in New York &amp; Washington D.C.\*\*

Call Toll Free:  
(800) 275-4860Office Hours:

Mon.-Thurs. 8:00 am to 9:00 pm EST

Friday 8:00 am to 6:00 pm EST

Saturday 8:00 am to 12:00 Noon EST

July 9, 2009

Reference Number ▶ 03813153-11

Account Number ▶ [REDACTED]	RE ▶ BRENDA BUNNELL
Balance ▶ \$16,423.06	
Creditor ▶ MKM ACQUISITIONS LLC, ASSIGNEE OF THE CHASE MANHATTAN BANK USA VISA	

This will acknowledge, with thanks, your payment of \$25.00 for the above-referenced account. Please make sure your next payment of \$50.00 arrives by the 15TH of each month so that your payment plan is kept current.

Please include the reference number with your payment.

If you have any questions regarding this account, please contact this office at the number(s) provided above.

Please tear off the bottom portion of this letter, fill it in completely, and include it with your next payment. We have enclosed a return envelope for your convenience.

You are invited to visit our website [www.lawofmnk.com](http://www.lawofmnk.com) to resolve this debt privately, or to write to us or to update your personal information. At this point in time, no attorney with this firm has personally reviewed the particular circumstances of your account.

**PLEASE ADDRESS ALL PAYMENTS TO:**

Law Offices of Mitchell N. Kay, P.C.

7 Penn Plaza, New York, NY 10001-3995

**Notice: Please see reverse side for important information.**

74CSMNK02MPR

\*\*\*Please Detach Lower Portion and Return with Payment\*\*\*

MKM ACQUISITIONS LLC, ASSIGNEE OF THE CHASE MANHATTAN BANK USA VISA

Reference #: 03813153-11

Balance: \$16,423.06

Amount Enclosed: \$ \_\_\_\_\_



Law Offices of Mitchell N. Kay, P.C.

PO Box 9006

Smithtown, NY 11787-9006

RETURN SERVICE REQUESTED

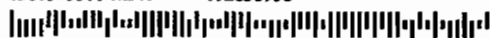
03813153M20709090.000000MKMMPR



Check here if new address information listed on back

July 9, 2009

0381315311-MPR 192838958



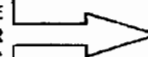
PERSONAL AND CONFIDENTIAL

BRENDA O BUNNELL

2433 Valentine Ave Apt 2N

Bronx NY 10458-5348

**SEE REVERSE  
SIDE FOR  
REMITTANCE ADDRESS**



0038131531150709090000050005000000000016423064MPR

# Exhibit D

## 7 Penn Plaza

New York, NY 10001

**\*\*Admitted in New York & Washington D.C.\*\***

Office Hours:

*Mon.-Thurs. 8.00 am to 9:00 pm EST*

Friday 8:00 am to 6:00 pm EST

**Saturday 8:00 am to 12:00 Noon EST**

August 20, 2009

Reference Number ► 03813153-11

Account Number ▶	RE ▶ BRENDA BUNNELL
Balance ▶ \$16,504.02	
Creditor ▶ MKM ACQUISITIONS LLC, ASSIGNEE OF THE CHASE MANHATTAN BANK USA VISA	
Amount Past Due	\$50.00

**Please be advised that you are in default of your payment arrangements regarding the above-referenced account.**

We request that you immediately bring your payments up to date by remitting the "amount past due" as indicated above. By doing so, you can avoid the possibility of additional collection activity by this office.

**If you have already mailed your payment, please disregard this notice.**

You are invited to visit our website **www.lawofmnk.com** to resolve this debt privately, or to write to us or to update your personal information. At this point in time, no attorney with this firm has personally reviewed the particular circumstances of your account.

**PLEASE ADDRESS ALL PAYMENTS TO:**

Law Offices of Mitchell N. Kay, P.C.  
7 Penn Plaza, New York, NY 10001-3995

**Notice: Please see reverse side for important information.**

74CSMNK P02MDL

\*\*\*Please Detach Lower Portion and Return with Payment\*\*\*

MKM ACQUISITIONS LLC, ASSIGNEE OF THE CHASE MANHATTAN BANK USA VISA



**Law Offices of Mitchell N. Kay, P.C.**  
PO Box 9006  
Smithtown, NY 11787-9006

RETURN SERVICE REQUESTED  
03813153M2082C090.C00000MKMMDL

Reference #: 03813153-11

Balance: \$16,504.02

**Amount Past Due: \$50.00**

**Amount Enclosed: \$**

**TO MAKE A PAYMENT BY CREDIT CARD,  
PLEASE CALL THE NUMBER SHOWN ABOVE**



Check here if new address information listed on back

0381315311-MDI. 211599618



**PERSONAL AND CONFIDENTIAL**  
BRENDA O BUNNELL  
2433 Valentine Ave Apt 2N  
Bronx NY 10458-5348

SEE REVERSE  
SIDE FOR  
REMITTANCE ADDRESS[illegible]

# Exhibit E



Exhibit F



# Exhibit G



10/29/09

Brenda Bunnell  
2433 Valentine Ave. #2N  
Bronx, NY 10458

Law Offices of Mitchell N. Kay PC  
7 Penn Plaza Sc  
NY NY 10001

To Whom It MAY Concern:

I received a letter from your office dated 10/16/2009 in which you say that I owe \$16,611.34 to MKM Acquisitions LLC, your reference # is 03813153-11. I dispute this debt.

In 2004 I was contacted by your office and agreed to pay \$25.00 per month towards a debt of about \$7,000.00. After that I paid \$25.00 a month every month without fail for the past 5 years. Each month you sent me an acknowledgement of my \$25.00 payment

(1)

That showed a balance reduced by exactly \$25.00 from the previous month.

Then in July 2009 you sent me and acknowledgement for my \$25.00 payment and a new balance of \$16,423.06.

In August and September you sent more letters demanding \$50.00 payments towards this new and increased balance.

On September 26, 2009 I called your office to dispute the balance. One of your employees told me that the Law Offices of Mitchell N. Kay no longer had this account because it had been taken back by Chase. I was told to get in touch with Chase. Then on October 16, 2009 I received a demand from your office for payment of a judgement balance of \$16,611.34.

Please provide me with a copy of the judgement and please show me how you have determined that I owe the new <sup>amount</sup> you claim I owe.

Sincerely

Brenda Bunnell  
Brenda Bunnell

I am sending this letter by certified mail return receipt requested.